

MAY 20

CHARLES E. HUNT

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 1072

95

THE PEOPLE OF PUERTO RICO,

Petitioner,

VS.

RUSSELL & Co., S. en C.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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*To the Honorable, the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit entered in this cause on March 10, 1941, reversing the judgment of the Supreme Court of Puerto Rico and remanding the case to that court with directions to order the dismissal of the complaint in this action brought by The People of Puerto Rico to recover something over \$100,000 of back taxes assessed under Act No. 49 of the Legislature of Puerto Rico of July 8, 1921.

The opinion of the Circuit Court of Appeals appears in 118 F. (2d) 225. That of the insular Supreme Court is in 56 P. R. Dec. 343 (*Spanish edition; not yet appearing in the English edition*). The former decision of the Circuit

Court of Appeals in this case (60 F. (2d) 10; June 27, 1932) was reversed by this court on jurisdictional grounds (*People of Puerto Rico vs. Russell & Co.*, 288 U. S. 476).

QUESTION PRESENTED

Does Act No. 49 of 1921 of the Legislature of Puerto Rico impair the obligation of the water rights contracts of August 26, 1914, between the Acting Commissioner of the Interior on behalf of the People of Puerto Rico and the predecessors in title of the respondent Russell & Co.?

The Circuit Court of Appeals, overruling the insular Supreme Court, holds that the Act does impair the obligation of those contracts, and is therefore beyond the power of the Legislature and invalid. Petitioner, on the contrary, believes that it does not; that the judgment of the Supreme Court of Puerto Rico upholding the Act was right, and should be affirmed.

STATEMENT

The case is stated in the first eight pages of the opinion of the Circuit Court of Appeals (R. 180-187, and the first 6 lines of 188; 118 F. (2d), *supra*, at pp. 226-230).

STATUTES

Act No. 49 of July 8, 1921, of the Legislature of Puerto Rico (Laws of Puerto Rico, 1921, pp. 366-370),

"Fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes",

the Act here directly assailed by the respondent, is in the Appendix (*infra*, pp. 27-30), as are likewise other pertinent Constitutional and statutory provisions, federal and insular (*infra*, pp. 27, 30-43), including pertinent portions of the insular Irrigation Law of 1908, and of the amendatory Act of 1913 (*infra*, pp. 30-33, 34-43).

CONTRACTS

Copies of the contracts of August 26, 1914, here involved, are "Exhibit A" and "Exhibit B" to the respondent's answer to the amended complaint in the District Court (R. 22-53).

These contracts have been before the courts in earlier cases. *Confer, Veitia vs. Fortuna Estates*, 240 Fed. 256; *People of Puerto Rico vs. Russell & Co.*, 268 Fed. 723.¹ In the latter case the Circuit Court of Appeals analyzed the contracts at length (at pp. 726-729), as well as (at pp. 725-726) the provisions of the antecedent irrigation Acts of 1908 and 1913 (Appendix, *infra*, pp. 30-43); and held, with relation to Section 13 of the Act of August 8, 1913 (Appendix, *infra*, pp. 41-43) that (268 Fed., *supra*, at p. 726):

"The power of the government officials to contract with the owners of water rights was, under this section of the statute, limited to giving in exchange for the old water rights water which would be a fair equivalent in value."

That holding was referred to with approval by the Circuit Court of Appeals in its former opinion in the present litigation (60 F. (2d), *supra*, at p. 13). It is in harmony with the insular Supreme Court's interpretation of the contracts in the present case (R. 156).² It is believed that it may safely be regarded as the law of this case.

¹ Also in *Gallardo, Treasurer vs. Havemeyer, et al.* [*Russell & Co.*], 21 F. (2d) 1012; remanded to the federal District Court of Puerto Rico with directions to dismiss the case for want of jurisdiction; one of the tax injunction cases dismissed by the Circuit Court of Appeals, First Circuit, pursuant to the decision of this Court in *Smallwood vs. Gallardo, Treasurer*, 275 U. S. 56, under the Butler Act of March 2, 1917 (44 Stat. 1418, 1421), forbidding the maintenance of tax injunction suits in the federal District Court for Puerto Rico.

² "The contracts do not say that the People of Puerto Rico bind themselves not to impose taxes. Indeed, *even if a clause like that had been included, we apprehend it would have been void.*" (R. 156). [*Italics supplied*]

OPINION OF THE SUPREME COURT OF PUERTO RICO

The Supreme Court of Puerto Rico,³ invites attention (R. 156) to the fact that the contracts of August 26, 1914 "do not say that the People of Puerto Rico bind themselves not to impose taxes"; and that,

"Indeed, even if a clause like that had been included, we apprehend it would have been void";

and also, with reference to the antecedent concessions for water rights held from the Crown of Spain by the appellant Russell & Co.'s predecessors in title, the taking of water under which had been suspended by the 1914 contracts in exchange for the water being received from the insular government irrigation system, the insular Supreme Court says (R. 156-157):

"While it is true, as the appellee says, that the appellant accepted and admitted that said concessions

³ Reversing the insular District Court of San Juan (R. 54-65) which had considered itself bound by the former opinion of the Circuit Court of Appeals in this case (60 F. (2d) 10, *supra*), although that decision had been reversed by this Court on jurisdictional grounds (288 U. S. 476, *supra*). The insular Supreme Court holds as to this matter that the former opinion of the Circuit Court of Appeals, having thus been reversed by this Court, although only on jurisdictional grounds, is not *stare decisis*, but that (R. 150):

"The reasoning of the Circuit Court should be given careful attention but under the circumstances is not binding";

with which the Circuit Court of Appeals itself agrees (*Opinion*, R. 187-188; 118 F. (2d) 225, 229-230), concluding:

"The insular District Court, the Supreme Court of Puerto Rico were, and this court also is, perfectly free to pass upon the questions here presented regardless of our former decision in *People of Porto Rico v. Havemeyer, supra*".

existed, nothing has been brought before this or any of the other courts which have passed on this case to show that a tax exemption was attached to them. As far as the record goes, these concessions are ordinary water concessions, like a number of others granted to land-owners in this Island and Spain. The only provision of which we know in regard to taxes was a section in the primitive Law of Waters by which the Crown bound itself not to raise the taxes on the lands benefited by the concession during a ten-year period."

The insular Supreme Court holds, therefore, that there is no impairment of the contracts. [The old Spanish concessions were taxable; the contracts of 1914 said nothing about waiving the Government tax rights; hence the substituted property right or franchise to receive water from the government system remains taxable, likewise as the former concessions; Act No. 49 of 1921 was simply an exercise of the governmental power to tax. Its fairness appears unquestionable].⁴

⁴ Upon the other question argued in the Circuit Court of Appeals in this case upon which that court said that it was "unnecessary to pass" (R. 191; 118 F. (2d) at p. 231), viz., whether Act No. 49 of 1921 makes any undue delegation of legislative power to the Commissioner of the Interior in the computation of the tax, the insular Supreme Court also upholds the statute. It interprets it as delegating only administrative rather than legislative powers. It holds (R. 154, 156):

"As we shall see later from the Act itself, what the Commissioner does is to fill in details. (R. 154) * * *"

"If the estimate is too high or too low, a surplus or a deficit will result. A surplus will be credited to the budget of the following year, thereby reducing the tax; a deficit will be added to the budget of the following year. Thus, any error committed by the commissioner will be automatically corrected when the next budget is prepared. It will be seen that the commissioner's discretion does not play an important part in the computation of the tax. Indeed, the commissioner's role could be eliminated and the cost of maintenance estimated

OPINION OF THE CIRCUIT COURT OF APPEALS

As stated, the Circuit Court of Appeals, in disagreement with the insular Supreme Court, considers that Act No. 49 impairs the obligation of the contracts. It reverses the insular court on that ground alone (R. 188-191; 118 F. (2d) at pp. 230-231).

PETITIONER'S POSITION

Petitioner believes:

First. The insular Supreme Court was right. Act No. 49 does not in any respect impair the obligation of the contracts.

Second. In any event, the view of the insular Supreme Court is clearly not unreasonable. That court was here interpreting local contracts and local statutes, all originally written in the Spanish language, and dealing with local conditions and business practices arising under laws originally derived from the Spanish system. The insular court's decision is certainly not so "patently erroneous" or "inescapably wrong" as to require or to justify its reversal by the Circuit Court of Appeals. *Sancho Bonet, Treasurer vs. Texas Company*, 308 U. S. 463, 471; *Sancho Bonet, Treasurer vs. Yabucoa Sugar Co.*, 306 U. S. 505, 509-511:

some other way. For example, the budget of a previous year to be taken as tentative for the following one. Such a procedure is followed in estimating the premium rates for the State Insurance Fund.

"The landowner pays the tax in the computation of which the commissioner's report is used. But since any difference between that estimate and the real cost of maintenance is adjusted the landowner is really paying for the exact cost of maintenance.

"Furthermore, it has not been charged, or even suggested that the commissioner's estimates are unjust, or confiscatory.

"We hold, therefore, that the act contains no undue delegation of powers." (R. 156)

REASONS FOR GRANTING THE WRIT

This case involves a serious disregard by the Circuit Court of Appeals of the spirit as well as the letter of the rule established and repeatedly emphasized by this Court of the respect to be accorded to decisions of a local Territorial Supreme Court, such as that of Puerto Rico, in interpreting and applying local statutes and local contracts in view of local conditions (*Sancho Bonet, Treasurer vs. Texas Company, supra*, 308 U. S. 463, 471; *Sancho Bonet, Treasurer vs. Yabucoa Sugar Co., supra*, 306 U. S. 505, 509-511); particularly in view of the fact that the Territorial Supreme Court was here construing contracts [as well as statutes] originally written in the Spanish language, dealing with the water rights and business customs derived from the Spanish civil law system, *Diaz vs. Gonzalez*, 261 U. S. 102, 105-106.

In this case the Circuit Court of Appeals has decided an important question of local law [of the meaning of these contracts] in a way directly in conflict with the local decision of the local court of last resort. The importance of the question of the validity of the insular taxing statute under attack is self-evident. If the decision of the Circuit Court of Appeals in this case is permitted to stand it means that the whole system of ascertainment, apportionment and assessment of the annual costs of the operation and maintenance of the Southern Coast Public Irrigation System, uniformly followed for many years, has been unlawful. The result would be not only the necessity of a prompt and extensive revision of the existing statutes, but, also, in all probability, the institution of numerous actions against the insular Government for refunds of taxes and assessments already collected under those statutes.

As a further reason for granting the writ your petitioner respectfully urges that certiorari might well be granted by this Court almost as a matter of course to review judgments of the Circuit Court of Appeals in cases which, like this, are closely analogous to those involving State statutes,

described in paragraph (b) of Section 240 of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 939; except that they involve the validity of Territorial statutes, instead of State statutes. In other words, since Section 240 (b) of the Judicial Code gives a definite right to a review of any judgment of a Circuit Court of Appeals holding a State statute invalid, at the instance of the party relying on such statute, it would seem fair and logical for this Court to make a practice of ordinarily likewise granting certiorari in analogous cases involving the validity of Territorial statutes,—such as, in this case, this Act of the Puerto Rican Legislature; particularly where, as here, the statute has been upheld by the Territorial court of last resort, but stricken down by the Circuit Court of Appeals. This would seem to be especially true where the insular statute in question, as in the present case, constitutes an exercise of the taxing power of the insular Legislature, and the party seeking the review is the insular Government itself.

Your petitioner therefore respectfully urges that the questions presented are such as should be finally settled and determined by this Court; and that this petition be granted.

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BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the insular District Court of San Juan ("Statement of the Case and Opinion", R. 54-56) is not officially reported. The opinion of the Supreme Court of Puerto Rico, March 15, 1940 (R. 148-168) is reported in 56 P. R. Dec. 343 (*Spanish edition*). It has not yet appeared in the English edition of the Puerto Rico Reports.

The opinion of the Circuit Court of Appeals (R. 180-191) appears in 118 F. (2d) 225 (*Advance Sheets*).

The former opinion of the Circuit Court of Appeals, June 27, 1932, in this case is reported as *People of Porto Rico vs. Havemeyer et al.*, 60 F. (2d) 10; and that of this Court, March 13, 1933, reversing it on jurisdictional grounds, as *Puerto Rico vs. Russell & Co.*, 288 U. S. 476.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code of the United States as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered March 10, 1941 (R. 191).

QUESTION PRESENTED

The single question here presented is stated in the Petition ("Question Presented", *ante*, p. 2).

STATUTES

These are indicated in the Petition (*ante*, p. 2), and pertinent parts are set out in the Appendix (*infra*, pp. 27-43).

STATEMENT

As indicated under the heading "Statement" in the Petition (*ante*, p. 2), the case is stated in the first eight pages of the opinion of the Circuit Court of Appeals (R. 180-187, and the first 6 lines of 188; 118 F. (2d), *supra*, at pp. 226-230).

SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Question Presented", "Petitioner's Position", and "Reasons for Granting the Writ" in the Petition (*ante*, pp. 6, and 7-8).

SUMMARY OF ARGUMENT

The argument is summarized under the headings "Petitioner's Position" and "Reasons for Granting the Writ" in the Petition (*ante*, pp. 6 and 7-8).

ARGUMENT

POINT I

The Supreme Court of Puerto Rico was right in holding that Act No. 49 of 1921 does not impair the obligation of the contracts of August 26, 1914; and the Circuit Court of Appeals erred in overruling the decision of the insular Supreme Court.

A. By assessing the lands in question for a *pro rata* share of the actual costs of currently maintaining and operating the system from which they are irrigated, Act No. 49 of 1921 does not impair the obligation of the contracts of August 26, 1914; because the contracts contain no provision exempting those lands from taxation; because such exemption cannot be presumed; because the official executing the contracts on behalf of the Puerto Rican Government had no authority to put any such provision into them [and did not do so]; and because, in the absence of any such exemption provision in the contracts, the Act of 1921 is clearly within the legislative powers of the insular Legislature.

B. The People of Puerto Rico has no quarrel with the general principles stated by the Circuit Court of Appeals in its opinion, namely, that a State cannot impair the obligations of its own contracts, and that this rule constitutes a limitation upon the power of taxation as well as upon other powers. The insular Government fully recognizes the soundness and force of those principles wherever they are applicable, and is more than willing that its actions under review in this case, as well as in all other connections, shall be judged according to the standard suggested in the

opinion of this Court, there cited, in *Woodruff vs. Trapnall*, 10 How. 190, 207; that is, "to be characterized by a more scrupulous regard for justice and a higher morality than belong to the ordinary transactions of individuals."

The People of Puerto Rico cannot justly be charged with any selfish interest whatever in the result of this controversy. The special taxes or assessments here in question, if and when collected, will simply accrue to the special fund for the current operation and maintenance of the irrigation district, and thus serve only to lower the assessments upon other lands now taxed for such operation and maintenance. The insular Treasury can derive no direct benefit. It is mainly on behalf of the farmers of the Southern Coast Public Irrigation District, and in the hope of securing justice for them, that The People of Puerto Rico has sought by the Act in question, and is seeking by this action, to compel the appellant *societal* to pay simply its fair and reasonable share of the current cost of operating and maintaining the system.

The position of the insular Government with relation to the present point is that the tax imposed by Act No. 49 does not impair the obligations of the contracts of August 26, 1914, *because the Government in those contracts did not agree not to tax the water rights therein granted to the predecessors in interest of the present appellant*. Neither of the contracts contains any limitation whatever upon the insular government's power of taxation; nor does the Act of August 8, 1913, under which they were made. Even if the contracts had contained such an undertaking it would have been illegal and void, as the insular Supreme Court correctly notes [R. 156, *supra*], because wholly unauthorized by the enabling statute. As the Circuit Court of Appeals said, more than twenty years ago, the second time it had these contracts before it, in *People of Porto Rico vs. Russell & Co., supra*, 268 Fed. 723, 726, October 28, 1920 [*quoted; ante*, p. 3], and approved twelve years later in its former opinion in the present case [60 F. (2d) *supra*, at p. 13], the power of

the government officials executing them was "limited to giving in exchange for the old water rights water which would be a fair equivalent in value".

C. Nor can such a tax waiver by the Government be inferred or implied, because of the well settled principle that *the taxing power of a government is never presumed to be relinquished*, and continues to exist with relation to property or rights granted by the Government, unless a contrary intention is declared in clear and unambiguous terms. This we regard as clearly established by the authorities relied upon by the Supreme Court of Puerto Rico in its opinion on this branch of the case (R. 156-167), which is believed to be entirely sound. Reference may also be made to the recent decision of the Circuit Court of Appeals for the First Circuit, itself, in *Porto Rico Ry. Lt. and Power Co. vs. Colom, Commissioner*, 106 F. (2d) 345, 351-352, that, *as against the government, a contract or franchise is not to be extended beyond its express terms; and to Society for Savings vs. Coite*, 6 Wall. 594, 606; and also to *Metropolitan Street Ry. Co. vs. New York*, 199 U. S. 1, 35-46 (*infra*, pp. 15-18).

D. It will hardly be contended that the original concessions granted by the Spanish Government to the predecessors in interest of the appellant *sociedad* were not subject to taxation by the insular Government. The contracts of August 26, 1914, constituted merely an agreement on the part of the Government that the holders of those concessions should receive from this irrigation system certain amounts of water agreed to be equivalent in value to those which they had been entitled to take under their concessions. *What was there in those contracts or in the circumstances under which they were made to justify the inference that the rights granted by the contracts were to be forever tax free? Why should the Government have given tax-exempt water rights in exchange for taxable water rights? Where was the consideration moving to the Government, or to the land owners of the irrigation district, sufficient to justify the perpetual*

release of the concession holders from any assessment whatever toward the cost of maintaining the service from which they were to be supplied? There was none. The concession holders simply exchanged taxable rights under their original concessions for rights equally taxable under the contracts.

E. Apparently the Circuit Court of Appeals, in that portion of its former opinion concerning this phase of the controversy, was influenced to some degree by an assumption that The People of Puerto Rico would have been unable to go ahead with the operation of the South Coast Irrigation District at all, if they had not been able to agree with the concession holders on a surrender of the concessions in exchange for equivalent water from the system [*Confer* 60 F. (2d), *supra*, at p. 14, "*which otherwise it could not do*"]. But this is not a fair assumption from the record. There is nothing to indicate that, had the Government so elected, it could not have modified the Jacaguas part of the plan so as to permit enough water to continue in the course of the river to provide these concession holders with the full amounts allowed by their concessions, while using the remainder, supplemented by the waters drawn through the tunnel from the Toro Negro River [from the well-watered north slope of the mountain chain], and perhaps other waters from other sources, for the desired development in that valley. The recitals in the contracts appear to indicate that the Government was prepared to do so: "*is ready to deliver . . . the amount of water . . . but in order to facilitate . . .*" (R. 26, 43-44.)

F. In support of its holding that Act No. 49 impairs the obligations of the contracts of August 26, 1914, the Circuit Court cites (R. 190; 118 F. (2d) at 231), and in its former opinion quoted (60 F. (2d), *supra*, at p. 15) from, *Murray vs. Charleston*, 96 U. S. 432, to the effect that a State or municipality may not, under the guise of levying taxes, impair the obligation of a contract. In that case the City of Charleston, Virginia, in order to raise money for municipal purposes, had issued and sold obligations bearing interest at

6 per centum per annum. Subsequently the city had levied a tax of 2 per centum on all real and personal property in the city, and the city authorities had attempted to collect this tax on certain of the city obligations owned by a resident of Germany by deducting the amount of the tax from payments of interest due from the city to the holder of the obligations. *It was not the tax on the obligations which was held to be an impairment of the contract in that case, but it was the attempt by the city to collect that tax by means of a deduction thereof from interest payments, that was held to constitute the impairment.* This Court there said, among other things (96 U. S. 432; *supra*; at p. 445) :

“Is, then, property, which consists in the promise of a State, or of a municipality of a State, beyond the reach of taxation? We do not affirm that it is. A State may undoubtedly tax any of its creditors within its jurisdiction for the debt due to him, and regulate the amount of the tax by the rate of interest the debt bears, if its promise be left unchanged. A tax thus laid impairs no obligation assumed. It leaves the contract untouched. But until payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely, payment to him, without a violation of the Constitution. The true rule of every case of property founded on contract with the government is this: It must first be reduced into possession, and then it will become subject, in common with other similar property, to the right of the government to raise contributions upon it.”

In short, in that *City of Charleston* case, if the city had fully complied with its contract by paying the full amount of the required interest, and had the owner of the municipal obligations in question been a resident of the city, then the city might lawfully have proceeded against such owner, together with the other owners of real and personal property within the city, for the collection of the tax, and there would have been no impairment of the obligation of the contract in a constitutional sense. *In the present case the insular Gov-*

ernment is withholding nothing from the appellant sociedad to which it is entitled under the contracts in question. The appellant and its predecessors in interest have been receiving all of the water called for by the contracts; and the insular Government is neither withholding nor proposing to withhold a single drop of it. The contracts here continue to be scrupulously fulfilled, and the Act of 1921 does not militate against such fulfillment. It must be obvious therefore that the case of *Murray vs. Charleston* affords no basis whatever for a holding in this case that the Act here in question impairs the obligations of the 1914 contracts in a constitutional sense.

G. An interesting and authoritative discussion of some of the principles involved in this connection will be found in the case of *Metropolitan Street Ry. Co. vs. New York*, 199 U. S. 1, *supra*. The street railway company under its charter was required to pay certain percentages of its gross receipts into the municipal treasury each year. Subsequently the Legislature of New York amended the state tax laws so as to make subject to general taxation all railway franchises, providing that where the companies were already paying a percentage of gross receipts, such payments should be deducted from their assessments. The railway company contested the validity of this statute upon the ground, among others, that it impaired the obligation of the contract embodied in its charter, by requiring the company to make payments in excess of those required by the charter. This Court affirmed the judgment of the Supreme Court of New York entered pursuant to the decision of the New York Court of Appeals (199 U. S., *supra*, at p. 5; and *cf.* 174 N. Y. 417) sustaining the validity of the statute upon the ground that the charter contained no clear and unequivocal exemption of the franchise from taxation, that the surrender of the taxing power is never to be presumed, and that therefore the increased tax involved no impairment of the charter contract. We quote from the opinion of the Court in that case as follows (199 U. S. *supra*, at pp. 35-38):

"The main contention is that this tax legislation impairs the obligation of contracts. It must be borne in mind that presumptively all property within the territorial limits of a State is subject to its taxing power. Whoever insists that any particular property is not so subject has the burden of proof and must make it entirely clear that, by contract or otherwise, the property is beyond its reach. In *Providence Bank vs. Billings*, 4 Pet. 514, MR. CHIEF JUSTICE MARSHALL, in delivering the opinion of the court, said (p. 561):

"That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear."

"In *Vicksburg &c. R. R. Co. vs. Dennis*, 116 U. S. 665, MR. JUSTICE GRAY cited many authorities, quoting the different phraseology in which by the several writers of the opinions the same rule was announced. In *Wells vs. Savannah*, 181 U. S. 531, the law was thus stated by MR. JUSTICE PECKHAM (p. 539):

"The payment of taxes on account of property otherwise liable to taxation can only be avoided by clear proof of a valid contract of exemption from such payment and the validity of such contract presupposes a good consideration therefor. If the property be in its nature taxable the contract exempting it from taxation must, as we have said, be clearly proved. It will not be inferred from facts which do not lead irresistibly and necessarily to the existence of the contract. The facts proved must show either a contract expressed in terms, or else it must be implied from facts which leave no room for doubt that such was the intention of the parties and that a valid consideration existed for the contract. If there be any doubt on these matters, the

contract has not been proven and the exemption does not exist.'

"In *Chicago Theological Seminary vs. Illinois*, 188 U. S. 662, the same Justice declared (p. 672):

"The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

"See also *Erie Ry. Co. vs. Pennsylvania*, 21 Wall. 492; *Wilmington & Weldon R.R. Co. vs. Alsbrook*, 146 U. S. 279; *Ford vs. Delta & Pine Land Co.*, 164 U. S. 662.

"This rule is akin to, if not part of, the broad proposition, now universally accepted, that in grants from the public nothing passes by implication. As said by MR. CHIEF JUSTICE TANEY, in *Charles River Bridge vs. Warren Bridge*, 11 Pet. 420, 549:

"The inquiry, then, is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be found in that instrument? It must be admitted on all hands that there is none; no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be by implication, and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question. In charters of this description, no rights are taken from the public or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purpose to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied."

"Applying these well-established rules to the several contracts, it will be perceived that there was no express relinquishment of the right of taxation. The plaintiff in error must rely upon some implication and not upon any direct stipulation. In each contract there was a grant of privileges, but the grant was specifically of privileges in respect to the construction, operation, and maintenance of a street railroad. These were all that in terms were granted. As consideration for this grant the grantees were to pay something, and such payment is nowhere said to be in lieu of or as an equivalent or sub-

stitute for taxes. All that can be extracted from the language used was a grant of privileges and a payment therefor. Other words must be written into the contract before there can be found any relinquishment of the power of taxation."

H. The Circuit Court of Appeals still adheres to ["agrees with," R. 189-190; 118 F. (2d) at 231] its own former opinion in this case, of June 27, 1932 (60 F. (2d) *supra*, at p. 15) that:

"It seems to us that this act amounts to saying that in the future Fortuna Estates' right to receive the water which The People of Porto Rico contracted to deliver to them in substitution for their old water rights and concessions shall be subject to their paying the taxes in question and impairs the obligation of The People of Porto Rico to furnish Fortuna Estates water which the former agreed to deliver the latter."

But did The People of Puerto Rico agree to make that delivery forever tax free? If so, where is that agreement set forth? If not, where is the impairment?

The theory of the insular Government is that each of the plantations of the appellant *sociedad* supplied with water from the Southern Coast Irrigation System is benefited specially by the maintenance and operation of that system, at least to the amount of its *pro rata* share of the current annual cost of maintaining the service; that the facts that the contracts of 1914 specify the amounts of water these plantations are entitled to receive from the system, and that the Government agreed to deliver those amounts in lieu of the amounts which the plantations were entitled to take from the river under the old concessions, do not alter the fact that the plantations are so benefited by the improvement; that the plantations are therefore properly chargeable, by special assessment or special tax, as provided in the Act, with their *pro rata* share of such current maintenance cost.

I. Against this theory it has been urged in behalf of the appellant *sociedad* that the only benefits accruing to the plantations from the maintenance of the irrigation system

are those expressly stipulated in the contracts, for which it is claimed full payment has already been made by the temporary and conditional surrender of rights under the original water concessions. But the Government regards the question whether the lands in question are specifically benefited by the development and maintenance of the irrigation system, otherwise than to the extent of the mere delivery of the amount of water stipulated in the contracts, as one for determination by the insular Legislature in its discretion, and one which that Legislature has in effect determined by the Act of 1921.

8. In other words, the insular Government regards the Act of 1921 as constituting in effect a declaration by the Legislature that the lands therein taxed are specially benefited by the operation and maintenance of the irrigation system, at least to the extent of the taxes levied thereon by that Act; and regards this determination as one which it was within the power of the Legislature to make, and one which the courts will not disturb, at least in the absence of some showing that it is arbitrary and oppressive.⁵

The principles last above mentioned are clearly enunciated by this Court in the case of *Spencer vs. Merchant*, 125 U. S. 345.

That case involved special assessments, amounting in the aggregate to about \$100,000, for street improvements in Kings County, New York. After the improvement had been completed, and the assessments had been levied upon abutting property, and while there still remained unpaid of these assessments about \$40,000 upon various tracts, the whole

⁵ Furthermore, this interpretation of the local statute having been accepted by the insular Supreme Court in its opinion in the present case [R. 161-167], will not be overturned, unless "inescapably wrong" [*Sancho Bonet, Treasurer vs. Texas Co.*, *supra*, 308 U. S. 463, 471; *Same vs. Yabucoa Sugar Co.*, *supra*, 306 U. S. 505, 509-510], which this interpretation clearly is not. To the contrary, it is clearly correct.

proceeding was declared invalid by the courts as to those who had not paid. Thereafter the Legislature of New York passed an act directing the Board of Supervisors of Kings County to levy an assessment upon the lands abutting on said improvement which had escaped assessment by reason of the invalidity of the prior proceeding, to the exact amount of the aggregate balance remaining unpaid with interest. The land owners objected upon the ground, among others, that the second act amounted to an attempt to levy a special assessment without regard to the benefits to the lands assessed. The validity of the act was sustained by the New York Court of Appeals (100 N. Y. 585), and by this Court, which said (125 U. S. *supra*, at pp. 352-353):

“The substance of the former decisions, and the grounds of the judgment sought to be reviewed, can hardly be more compactly or forcibly stated than they have been by Judge Finch in delivering the opinion of the Court of Appeals, as follows:

“The act of 1881 determines absolutely and conclusively the amount of tax to be raised, and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the legislature, whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. . . . The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review. Here an improvement has been ordered and made, the expense of which might justly have been imposed upon adjacent property benefited by the change. By the Act of 1881, the legislature imposes the unpaid portion of the cost and expense, with the interest thereon, upon that portion of the property benefited which has thus far borne none of the burden. In so doing, it necessarily determines two things, viz., the amount to be realized, and the property specially benefited by the expenditure of that amount. The lands might have been benefited by the improvement, and so the legislative determination that they

were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to our review. The question of special benefit and the property to which it extends is of necessity a question of fact, and when the legislature determines it in a case within its general power, its decision must of course be final. We can see in the determination reached possible sources of error and perhaps even of injustice, but we are not at liberty to say that the tax on the property covered by the law of 1881 was imposed without reference to special benefits. The legislature practically determined that the lands described in that act were peculiarly benefited by the improvement to a certain specified amount which constituted a just proportion of the whole cost and expense, and while it may be that the process by which the result was reached was not the best obtainable, and some other might have been more accurate and just, we cannot for that reason question an enactment within the general legislative power.' "

See also *Fallbrook Irrigation District vs. Bradley*, 164 U. S. 112, 174-178, quoted by the insular Supreme Court (R. 163-167); the latter case citing with approval and following *Spencer vs. Merchant*, *supra*.

POINT II

The Acting Commissioner of the Interior of Puerto Rico, in executing the contracts of August 26, 1914, on behalf of the Government of Puerto Rico possessed no power to bind the Government to deliver the water free of any charge for the cost of delivery.

A. In executing the contracts, the Acting Commissioner of the Interior was acting on behalf of the Government of Puerto Rico solely under the authority given by Section 13 of Act No. 128 of the Legislature of Puerto Rico, approved August 8, 1913 (Appendix, *infra*, pp. 41-43), authorizing him to negotiate with the owners of old Spanish water rights or concessions which had not been relinquished or surrendered, and (Appendix, *infra*, p. 41)

"to enter into agreement with such owner or owners as to the amount of water and the time, place and

conditions of delivery thereof, which shall be delivered to the land to which the said water rights of concessions are appurtenant as the fair equivalent thereof,"

B. The Circuit Court of Appeals, in one of the earlier cases construing these contracts of August 26, 1914, in connection with the authority thus given to the Commissioner of the Interior, by virtue of which the contracts were executed, expressly held (*People of Puerto Rico vs. Russell & Co. supra* [this same respondent], 268 F. 723, 726) that:

"The power of the government officials to contract with the owners of water rights was, under this section of the statute, limited to giving in exchange for the old water rights water which would be a fair equivalent in value"; [*ante*, p. 3]

and the Circuit Court of Appeals referred with approval to that decision, in its former opinion in the present litigation (*People of Porto Rico vs. Havemeyer, supra*, 60 F. (2d) 10, 13); and does not question it in its present opinion.

It is believed that that decision was clearly right, and may now be regarded as the established law of this case.

C. The opinion of the Supreme Court of Puerto Rico in the present case is in harmony with that decision. As above quoted, the insular Supreme Court says (R. 156):

"The contracts do not say that the People of Puerto Rico bind themselves not to impose taxes. Indeed, *even if a clause like that had been included, we apprehend it would have been void.*" [*Italics supplied*]

D. This has the added authority of being the insular Supreme Court's interpretation of this local statute,—in harmony with the earlier interpretation by the Circuit Court of Appeals itself.

E. In other words, in the 1914 contracts, the parties were dealing only with the *quantum* of the water. That was the only thing the 1913 Act authorized the Commissioner to contract about. He could not and did not attempt to make any arrangements as to the cost of maintenance of the necessary irrigation equipment.

POINT III

It is axiomatic that a statute is not to be stricken down unless clearly beyond the legislative power.

As the Circuit Court of Appeals for the First Circuit itself once said, in sustaining another statute of Puerto Rico there assailed, which constituted a part of the general legislative scheme for hydroelectric development in the Island (*Gallardo vs. Porto Rico Ry. L. & Power Co.*, 18 F. (2d) 918, 923):

"doubt is not enough; it must be clearly unconstitutional to warrant the courts in holding the act void; *Green vs. Frazier*, 253 U. S. 233." (*Emphasis supplied*)

POINT IV

In any event the decision of the insular Supreme Court was not so wholly unreasonable, nor "patently erroneous", nor "inescapably wrong" as to require or justify reversal by the Circuit Court of Appeals.

A. The insular Supreme Court was here interpreting and applying insular statutes dealing with local taxation, and local water rights, in connection with local contracts originally made in the Spanish language in 1914 in relation to earlier ones of those statutes [those of 1908 and 1913], and in view of local conditions and local business practices. Clearly such a decision by the local Territorial Supreme Court should not have been disturbed by the Circuit Court of Appeals, unless, as repeatedly said by this Court, "patently erroneous" or "inescapably wrong". *Sancho Bonet, Treasurer vs. Texas Co.*, *supra*; *Sancho Bonet, Treasurer vs. Yabucoa Sugar Co.*, *supra*.

B. Particularly is this true, where, as here, the interpretation, both of the statutes and of the contracts, depended primarily upon construction of the phraseology in the Spanish language in which they were originally written, and a knowledge of the Spanish legal system from which the water rights law in Puerto Rico was originally derived. MR. JUSTICE HOLMES said, speaking for this Court, in *Diaz vs. Gonzalez*, *supra*, 261 U. S. 102, 105-106;

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. * * * This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a stone wall, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books. * * * The importance that we attribute to these considerations led to our granting the writ of certiorari and requires us to reverse the judgment below."

C. And again, this rule is particularly applicable here because this Act No. 49 of 1921 is a taxing statute. It formed a part of the general plan for the irrigation of the southern coast district of Puerto Rico, and for providing the necessary funds. As this Court said with specific reference to such taxing acts, in *Sancho Bonet, Treasurer vs. Yabucoa Sugar Co.*, *supra*, 306 U. S. 505, 510:

"Taxing acts of Puerto Rico are purely local and the traditional reluctance of this Court to overturn constructions of such local statutes by local courts is particularly applicable to interpretations of Puerto Rican statutes by Puerto Rican tribunals. Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

CONCLUSION

The judgment of the Supreme Court of Puerto Rico upholding Act No. 49 of 1921 was right. It certainly was not "inescapably wrong". The Circuit Court of Appeals was in error in overruling it. The question of the validity of this taxing statute, forming a part of the complicated

system of financing the development of the public hydro-electric and irrigation system of the Island of Puerto Rico, is of great importance. And as a matter of general policy, as urged in our "Reasons for Granting the Writ" [Petition, *ante*, pp. 7-8], a Territorial statute, particularly a taxing statute, sustained by the local court of last resort, should not be stricken down without the question of its validity being passed upon and settled by this Court. The writ of certiorari should be granted; the judgment of the Circuit Court of Appeals reversed; and that of the Supreme Court of Puerto Rico affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION :

Fifth Amendment.

No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *

FEDERAL :

The Organic Act for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951:

Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Section 3.—(*As amended by Act of Congress, approved March 4, 1927.*)—That no export duties shall be levied or collected on exports from Porto Rico, but taxes and assessments on property, income taxes, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico; * * *

Section 25.—That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Section 37.—That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * *

PUERTO RICO :

Act No. 49, approved July 8, 1921; Laws of Puerto Rico, 1921, pp. 366-370.

AN ACT

Fixing a Tax on Certain Lands Using Water From the Southern Coast Public Irrigation System, On Which Lands No Tax Whatsoever was levied under the Public Irrigation Law, And For Other Purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.

Section 2.—That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of lands subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledge the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system, and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts, by four,—that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied

because of acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Porto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under Section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbefore provided, and the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the moneys collected shall

be covered into the Insular Treasury to the credit of a special trust fund known as the "Irrigation Fund," to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and Laws amendatory thereof.

Section 3.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 4.—This Act shall take effect ninety days after its approval.

**Pertinent Extracts from an Act of the Legislature of Porto Rico
Approved September 18, 1908. Laws of 1909, pp. 152-178.**

AN ACT

To Provide for the Construction of an Irrigation System, and to Provide Revenues Therefor; for the Temporary Appropriation of Two Hundred Thousand Dollars to begin such Work, and for other Purposes.

Be it enacted by the Legislative Assembly of Porto Rico:

Section 1.—The sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying to completion the preparation of working plans and specifications for the construction of an irrigation system for the district situated approximately between the river Patillas on the east and the river Portugues on the west, and irrigable lands on both sides of both rivers and for the commencement and prosecution of the work of construction thereof, and expenses in connection therewith, until such time as sufficient funds shall be available in the Treasury from the sale of bonds provided for such purpose by legislative enactment.

Section 6.—Upon the approval of the plans, and after consultation with the engineer in charge, the Executive Council shall provide for letting the construction of the work by contract, either as a whole or in parts. The said contract or contracts shall be awarded after due call for

bids, advertised both in the Island of Porto Rico and in the United States, *provided, however*, that the Executive Council reserves the right to reject any or all bids.

Section 10.—Upon the completion of the whole or any part of the irrigation system, the Commissioner of the Interior shall provide for its maintenance and operation, and shall, with the approval of the Executive Council, make and award all necessary contracts and make the necessary by-laws, rules and regulations for patrolling and for the disposition and use of the water in the district.

Section 23.—The Irrigation Commission shall ascertain the value of all water rights and concessions which shall have been relinquished and transferred to The People of Porto Rico, and shall determine what amount will constitute a just credit on account thereof to be given upon the taxes assessed upon the lands appurtenant thereto, as distinguished from other lands not carrying any water concessions, complying in all respects with the provisions of the contracts for the relinquishment of said rights.

Section 24.—Upon the completion of the labors of the Commission, they shall transmit to the Treasurer the lists and map of the lands to be included in the Irrigation District, as decided upon by them.

They shall also transmit to the Treasurer of Porto Rico their findings as to the value of the relinquished water concessions, and the deductions from annual assessments by reason thereof.

The said Commission shall thereupon adjourn, to meet thereafter only upon call of the Governor.

Section 25.—The Treasurer shall thereupon advertise for six consecutive days in daily newspapers of general circulation . . .

Section 26.—In the ascertainment of what lands are to be included in the Irrigation District, and in estimating the value of relinquished water rights and of corresponding

deductions from the taxes assessed upon the lands by reason thereof, the decision of the said Irrigation Commission shall be *prima facie* true and correct, but any person or persons claiming to be aggrieved by the findings and conclusions shall have thirty days . . .

Section 27.—Upon all lands in the Irrigation District there shall be assessed a uniform amount per acre, upon a basis to be determined as herein provided.

Section 28.—The amount that shall be assessed and levied upon a given tract of land for any fiscal year shall be determined as follows:

The Treasurer of Porto Rico shall estimate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, plus the total amount due upon credits for the ensuing year on account of relinquished water rights; and shall add thereto the amount estimated and certified to him by the Commissioner of the Interior for the cost of maintenance and repairs for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the amount of any deficit or surplus, as the case may be, remaining in the Irrigation Fund from the operations of the current or prior fiscal years. He shall then add thereto an amount equivalent to five per cent of the total, as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico shall be and constitute the total sum assessed for said fiscal year, and the same shall be and is hereby levied upon the lands in question in the proportion that the area of any particular tract of land bears to the whole number of acres irrigated. The amounts resulting from such computation shall be extended upon the tax roll for the different tracts, respectively, embraced with said district with the proper deductions therefrom in proper cases as herein provided on account of relinquished water rights. The tax roll so extended shall be completed by the Treasurer of Porto Rico on or before the 1st day of July of each year, and is hereby imposed as a charge upon

said lands in favor of The People of Porto Rico, and shall, from this date, constitute a tax, the lien of which shall be superior and prior in law to any right, claim or lien of any nature save and except the general taxes of Porto Rico as provided by law, and same shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof and to the embargo and sale of the land to enforce collection thereof and in the manner and at the times now or hereafter provided by law for the collection and enforcement of other real property taxes. *Provided, however,* that in order not to inflict any unnecessary burden upon said lands during the period of construction, no assessment shall fall upon any tract of land until the part of the irrigation system in which the tract is situated has been in active operation for one year, but thereafter the said tract of land shall be liable, at the regular assessment dates, for the same proportionate assessments as would have been the case had all the lands in the District been included in the assessments for said year, under the prior provisions of this Section; *provided, further,* that payments made from the Irrigation Fund during the period of construction to meet interest or any expenses of maintenance and operation shall be assessed and refunded in the following special manner: The Auditor shall make an equal distribution thereof over the whole period of the life of the bonds and at the end of each fiscal year he shall certify to the Treasurer the amount thereof corresponding to the fiscal year to be included in the amount to be assessed under the term "deficit" as aforesaid.

.

Section 34.—This Act shall be known and referred to as the Public Irrigation Law and shall take effect from and after its approval by the Governor of Porto Rico.

Pertinent Extracts from Act No. 128 of the Legislature of Porto Rico,
Approved August 8, 1913 [Laws of 1914, pp. 54-84].

AN ACT

*To Amend Certain Sections of the Public Irrigation Law,
approved September 18, 1908, as amended
and for other purposes.*

Term of office of Irrigation Commission extended. Section 1.—That the term of office of the Irrigation Commission, as at present constituted, or as hereafter constituted under the provisions hereof, insofar as the same was limited by Section 15 of the Public Irrigation Law, approved September 18, 1908, as amended March 9, 1911, be, and hereby is, extended to include such time as shall be required for the completion of the additional duties imposed upon the said Irrigation Commission by the provisions of this Act.

Section 2.—That the said Irrigation Commission shall have the power, and are hereby directed, to fix, according to the provisions hereinafter contained, the geographical boundaries of both a temporary and a permanent irrigation district; to determine what irrigable land shall be included therein; and to determine, as hereinafter provided, the value of water rights or concessions, and the basis for the computation of credits to be given on account thereof, on the taxes to be assessed as hereinafter provided upon the lands to which the said water rights or concessions are appurtenant.

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Appeals from decisions of the Commission in connection with the permanent irrigation district. Section 10.—In the determination of what lands are to be included in the said permanent irrigation district, and of the value of relinquished water rights or concessions in connection therewith, and of the basis for the computation of credits on taxation on account thereof, the decision of the said Irrigation Commission shall be considered *prima facie* true and correct. Any person or persons, however, including The People of Porto Rico,

claiming to be aggrieved by any decision of the said Irrigation Commission as to the inclusion or exclusion of any land in or from the said permanent irrigation district, or as to the value of the said water rights or concessions in connection therewith, or as to the basis for the computation of credits on taxation on account thereof, shall have ninety days, and no longer, from and after the date of the beginning of the permanent irrigation district, as hereinbefore provided, within which time to file in the office of the Secretary of the District Court of San Juan a statement of the facts upon which such grievance is based. The District Court of San Juan shall set a time, as soon as may be thereafter, for a general hearing upon all of the questions of such grievances in one proceeding, and shall hear all such complaints filed in such court, respectively, together in one proceeding. The parties so claiming to have been aggrieved shall have the right, as in any ordinary civil proceedings, to procure the attendance of witnesses, and on behalf of The People of Porto Rico the Commissioner of the Interior shall have the right, as in any ordinary civil proceeding, to determine the matters so presented and give judgment as in a civil action, confirming, modifying or reversing the findings of the Irrigation Commission thereon. From the judgment so entered by the district court appeals shall lie to the Supreme Court of Porto Rico for the reviewing of those controversies in which the parties claiming to be aggrieved by the judgment of the said district court shall have given notice within thirty days after the filing of judgment therein that they appeal therefrom. Such an appeal may be taken by The People of Porto Rico and by any one or more of the complainants whose grievances were determined by the said district court. In case there is more than one appeal from the said district court, the said Supreme Court shall render final and conclusive judgment upon all of the said controversies; in the said appeals any of the parties affected by the said judgments, including The People of Porto Rico, shall be entitled to be heard for the purpose of securing a revision by the said Supreme Court of the judgment of

the said district court for error of law or finding of fact, the said hearings

Section 11.—The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

Method and amount of taxation during the permanent irrigation district. The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the total amount due upon credits, for the ensuing year on account of water rights or concessions; and shall further add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any other sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same

shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district); *Provided, however, That* no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district; *Provided, further, however, That* if any portion of the principal of any bonds falling due in any year cannot be paid under an assessment levied according to the provisions of this section, then the amount which cannot so be paid and for the refunding of which provision is hereinafter made, shall not be deemed a deficit in any subsequent year; *And provided, further;* That prior to the certifying by the Commissioner of the Interior of the amount thus estimated by him as receipts from water power, the Commissioner of the Interior may, if in his judgment it is advisable, deduct from the amount thus estimated by him a sum not to exceed 25 per cent of the said amount for the development and extension of the said water power.

The amount of credit on taxes to which any tract of land having a water right or concession shall be entitled on account of the relinquishment of the same shall be such percentage of such taxes as shall have been determined by the Irrigation Commission as hereinbefore provided.

No tract of land included in the permanent irrigation district shall pay any tax until it shall have received or have been offered water from the irrigation system for a period of twelve months

Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district. The amounts resulting from such computation, or if such amounts exceed the amount which can be assessed under the provisions hereof, then such maximum amount as may

be assessed under the said provisions, shall be extended upon the tax roll for the different tracts at the time comprising the permanent irrigation district, after first deducting in the case of any land entitled to a credit for a water right or concession the proper credit to which the said tract of land is entitled, computed according to the provisions hereinbefore contained. The tax roll so extended shall be completed by the Treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a charge upon the said lands (but not as a personal liability upon the owners thereof) in favor of The People of Porto Rico, and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, and the same shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof, and to the embargo and sale of the land to enforce the collection thereof, in the manner and at the time now or hereafter provided by law for the collection and enforcement of other real property taxes except that in the case of taxes assessed for a period of less than six months as hereinbefore provided the said taxes shall be assessed, levied and collected as hereinbefore provided; *Provided, however,* That anything hereinbefore contained to the contrary notwithstanding, (1) in case any assessment for any fiscal year determined as above provided shall amount to more than fifteen dollars (\$15) per acre per annum, prior to deducting credits for relinquished water rights or concessions, then the assessment for such fiscal year shall exceed fifteen dollars (\$15) per acre per annum only to the extent that it is necessary that the assessment should exceed the said rate in order to provide for the payment of interest, operation and maintenance, the deficit of the preceding year, if any; (*Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district,) and the two per centum margin of safety provided for above, plus fifty thousand dollars (\$50,000) for the payment of

the principal of bonds falling due in the said fiscal year, less the surplus, if any, of the preceding year and any estimated receipts as income from other sources, as above provided; and (2) that no tax for the payment of any part of the interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided shall be paid on any tract of land which has received or has been offered, prior to the date for payment of the said tax, water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have received or shall have been offered, during the preceding fiscal year, water from the irrigation system, as shown by the records of the Irrigation Service, to the amount of at least one acre foot per acre during the first six months thereof and at least one acre foot per acre during the second six months thereof; *Provided, further*, That when in the above case the said tax is due upon the first of July terminating the fiscal year to which the above test is to be applied, then the said land shall pay the said tax if it shall have received or shall have been offered water from the irrigation system during the first six months of the said fiscal year, to the amount of at least one acre foot per acre; *Provided, further*, That no tax for the payment of any part of the interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided, shall be paid on any tract of land which has not, prior to the date for payment of the said tax, received or been offered water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have received or shall have been offered water from the irrigation system as shown by the records of the Irrigation Service to the amount of at least one acre foot per acre during the next preceding half year (either calendar or fiscal) ending more than one month prior to the date of the said payment; *Provided, further*, however, That the foregoing exemptions from taxation conditioned upon the receipt by, or the offering to, the lands within the Irrigation district of a certain amount of water from the irrigation system shall cease to be oper-

ative and effective at such time after the beginning of the permanent irrigation district as the Chief Engineer of the Irrigation Service shall certify to the Commissioner of the Interior that each fundamental integral part of the irrigation system has been constructed.

The amount which may be included in the assessment for any one fiscal year for the payment of the principal of the bonds shall not exceed one hundred and fifty thousand dollars (\$150,000).

Effect of an appeal upon status of land and taxation. Section 12.— In case any land is included in the permanent irrigation district by the Irrigation Commission, and the owner or owners thereof, or The People of Porto Rico, shall appeal from such inclusion, the land shall be assessed and shall pay taxes at the rate and under the conditions fixed in the decision of the Commission appealed from until finally excluded by the district court or the Supreme Court. If the said land is finally so excluded the Treasurer of Porto Rico shall refund, out of the Irrigation Fund, the amount of taxes paid during the existence of the permanent irrigation district, provided the land has, during the existence of the permanent irrigation district, received no water from the irrigation system. If the said land so excluded has received water from the irrigation system during the existence of the permanent irrigation district, the Treasurer of Porto Rico shall refund out of the Irrigation Fund any amount of taxes paid by the owner of the said land during the existence of the permanent irrigation district in excess of an average of fifteen dollars (\$15) per acre per annum, prior to deducting credits for relinquished water rights or concessions. In connection herewith, and in reference to the revision and recovery of taxes assessed and collected under the provisions hereof, it shall be understood that the general tax laws of Porto Rico do not apply.

If any tract of land shall be excluded from the permanent irrigation district by the Irrigation Commission, but afterward included by virtue of an appeal either by the owner

or owners, or by The People of Porto Rico, the said land shall, after such inclusion, be assessed at the same rate as the other lands in the district, but it shall not pay any tax until it shall have had or shall have been offered water from the irrigation system for a period of twelve months.

If any tract of land, after having been included in the temporary irrigation district, shall be finally excluded from the permanent irrigation district by the Irrigation Commission, or by the district court, or by the Supreme Court, the said land shall be entitled to continue to receive water from the irrigation system up to the harvesting of the crop, if any, then growing upon the said land, and shall pay therefor at the same proportional rate of taxation and under the same conditions as the other lands in the said permanent irrigation district.

Non-relinquished water rights or concessions. Section 13.—In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession:

Commissioner of the Interior empowered to negotiate in relation thereto. The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights or concessions, and with the owner or owners of any water rights or concessions heretofore relinquished or surrendered, on condition that the lands to which they are appurtenant should form part of the irrigation district, and which lands have not been included by the Irrigation Commission, and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the land to which the said water rights or concessions are

appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent. Before entering into such agreement the Commissioner of the Interior shall consult the Attorney General of Porto Rico as to the validity and legal status of the water rights or concessions involved.

Powers of Commission in relation thereto. In the case of any water right or concession in connection with which no such contract or agreement is made prior to January 1, 1914, the Irrigation Commission shall have the power to decide as to the validity and the legal status of any such water right or concession, and in the case of valid and subsisting water rights or concessions to determine what amount of water must be delivered by the Irrigation Service to the lands to which such water rights or concessions are appurtenant.

Rights of appeal in relation thereto. Any owner or owners of any lands carrying water rights or concessions aggrieved by any such decision of the said Irrigation Commission, or the Attorney General of Porto Rico on behalf of The People of Porto Rico, may appeal from the said decision to the district court of the district in which the said land is situated. The said appeal may be taken at any time within, and not after ninety (90) days from the date of the beginning of the temporary irrigation district if the said decision is made by the Irrigation Commission in connection with the formation of the temporary irrigation district, and within and not after ninety (90) days from the date of the beginning of the permanent irrigation district if the said decision is made by the Irrigation Commission in connection with the formation of the permanent irrigation district. An appeal may be taken to the Supreme Court of Porto Rico by any party, including The People of Porto Rico, aggrieved

by the decision of the district court made as provided in this section, within thirty (30) days after the rendering of the said decision. Pending the final determination of the questions involved in any appeal taken under the provisions of this section, the decision of the said Irrigation Commission shall be binding both upon the Irrigation Service and the owner or owners of the water rights or concessions involved.

Standard of water. Section 18.—The amount of water which shall be set as a standard for the establishment of both the temporary and permanent irrigation districts shall be four acre feet per acre per annum, the said standard to be applied on the basis of fair average years.

Repeal of former laws. Section 36.—That sections 21, 23, 24, 25, 26, 27, 28 and 30 of the Public Irrigation Law, approved September 18, 1908, as amended by subsequent enactments be and the same hereby are, repealed; that sections 7 and 8 of the Act amending the Public Irrigation Law, approved March 9, 1911, be repealed; that all other parts of the Public Irrigation Law and of the Act amending and amplifying said law, approved March 9, 1911, and all other laws and parts of laws, in conflict with this Act, be and the same hereby are, repealed.

Section 37.—This Act shall take effect immediately upon its approval.

Approved, August 8, 1913.